SUPREME COURT, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 1240

L. A. DAVIDSON,
Petitioner,

v.

MICHIGAN DEPARTMENT OF REVENUE, now known as THE DIVISION OF REVENUE OF THE DEPARTMENT OF TREASURY, STATE OF MICHIGAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

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MICHIGAN DEPARTMENT OF REVENUE, now known as THE DIVISION OF REVENUE OF THE DEPARTMENT OF TREASURY, STATE OF MICHIGAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF MICHIGAN

Petitioner prays that a Writ of Certionari issue to review the decision of the Michigan Court of Appeals which peremptorily ordered the reversal of a judgment of the Ingham County (Michigan) Circuit Court, Old Chancery No. 45136, for petitioner L. A. Davidson, on the basis of the Michigan Supreme Court's decision in *Walter Toebe & Co. v. Revenue Department*, 378 Mich. 617, 148 N.W.2d 775 (1967).

Petitioner's Application for Leave to Appeal was denied by the Michigan Supreme Court on December 18, 1967.

CITATIONS TO OPINIONS BELOW

The decision of the Michigan Court of Appeals is unreported and is printed in Appendix A hereto, *infra*, p. 1a.

The judgment of the Ingham County (Michigan) Circuit Court is unreported and is printed in Appendix A hereto, *infra*, p. 3a, together with the Opinion of the Ingham County (Michigan) Circuit Court denying respondent's Motion to Dismiss (*infra*, p. 5a), upon which the final judgment of the Ingham County (Michigan) Circuit Court was based.

The opinion of the Michigan Supreme Court in *Walter Toebe & Co. v. Revenue Department* upon which the peremptory order of the Michigan Court of Appeals was based, is reported at 378 Mich. 617, 148 N.W.2d 775 and is printed in Appendix B hereto, *infra*, p. 18a.

JURISDICTION

The decision of the Michigan Court of Appeals, *infra* p. 1a, was entered on September 21, 1967.

Petitioner filed Application for Leave to Appeal with the Michigan Supreme Court on October 6, 1967, which Application was denied on December 18, 1967 (*Infra*, p. 16a).

The jurisdiction of this Court is invoked under 28 U.S.C., 1964 ed., § 1257 (3).

QUESTIONS PRESENTED

1. Whether the failure to grant an exemption from the Michigan Use Tax for property purchased by petitioner which is affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract with the State of Michigan, i.e., a contract financed ninety per cent by the United States Government under the Federal-Aid Highway Act of 1956, 23 U.S.C. 1964 ed., § 101, et. seq., when an exemption is granted persons engaged in the business of constructing, altering, repairing or improving real estate for others when property so purchased by such persons is affixed and made a structural part of real estate or used and completely consumed in the

fulfillment of a single contract with a political subdivision of the State of Michigan, constitutes an unconstitutional discrimination against the United States.

2. Whether the granting of an exemption from the Michigan Use Tax for property purchased by persons engaged in the business of constructing, altering, repairing or improving real estate for others when property so purchased by such persons is affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract with a political subdivision of the State of Michigan, but not in the fulfillment of a single contract with the State of Michigan, is so arbitrary, unreasonable and discriminatory as to deny the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The constitutional provision involved is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, U.S. Const., amend. XIV, § 1. It is printed in Appendix C hereto *infra*, p. 28a.

The statute involved is Section 4(m) of the Michigan Use Tax, Mich. Comp. Laws '48, § 205.94(m), Mich. Stat. Ann. § 21.555(4)(m). It is printed in Appendix C hereto, *infra*, p. 28a.

STATEMENT

Prior to September 1, 1959, the Michigan Use Tax, Mich. Comp. Laws '48, § 205.91 et. seq., as amended, Mich. Stat. Ann. § 21.555(1) et. seq., as amended, exempted from taxation property purchased by persons engaged in the business of constructing, altering, repairing, or improving real estate for others when property so purchased by such persons was affixed and made a structural part of real

estate or used and completely consumed in the fulfillment of a contract with the United States, the State of Michigan, its departments or institutions, or any of its subdivisions. By amendment to the Use Tax by Michigan Public Acts of 1959, No. 263, effective September 1, 1960, this exemption from the use tax for contractors was eliminated for contracts with the United States. By further amendment in 1959, Public Acts of 1959, No. 272, effective January 1, 1960, the Michigan Use Tax exemption for contractors was eliminated for contracts with the State of Michigan. As a result of these two amendments, only property used in contracts with political subdivisions of the State of Michigan was exempted from the imposition of the use tax. The effects of Acts 263 and 272 of 1959 were eliminated by Public Acts of 1964, No. 164, effective August 28, 1964, which restored the contractors exemption for contracts with the United States, the State of Michigan and its political subdivisions.

On July 20, 1962, petitioner brought a Bill for Declaratory Judgment in the Circuit Court for the County of Ingham, State of Michigan, challenging the constitutionality of the amendments to the Michigan Use Tax which deprived petitioner of its exemption from the use tax for property purchased by petitioner which was affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a contract with the State of Michigan. Petitioner's challenge to the constitutionality of the amendments was made in paragraph 19 of petitioner's Bill of Complaint, wherein petitioner said:

> "19. To the extent that said Use Tax Act is construed and applied so as to impose upon plaintiff a Use Tax with respect to property purchased and affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a single contract with the State of Michigan and its departments, while exempting from said Use Tax property purchased by contractors in fulfillment of similar contracts with political subdivisions of the State of Michigan, the said Use Tax Act contravenes and is repugnant to the Constitution of the United States of

America and to the Constitution of the State of Michigan and by way of illustration:

(a) it discriminates against plaintiff as a contractor with the Michigan State Highway Department, a Department of the State of Michigan, and constitutes unreasonable and arbitrary class legislation and deprives plaintiff of his property without due process of law and denies to plaintiff the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States;

* * *

(d) it constitutes a clear and hostile discrimination against contractors with the Michigan State Highway Department with the objective of imposing the economic burden of a tax on the funds contributed by the United States under the Federal Highway Act adopted on August 27, 1958 (72 Stat. 885; Title 23, U. S. Code, Section 101, etc.) and violates the constitutional immunity of the United States from state taxation."

Upon filing of its Bill for Declaratory Judgment, defendant Michigan Department of Revenue filed a Motion to Dismiss. On December 3, 1962, the Circuit Court for the County of Ingham filed its Opinion denying defendant's Motion to Dismiss, printed *infra*, p. 5a, holding that the amendments to the Michigan Use Tax were "patently unreasonable, palpably arbitrary, discriminatory and wholly illusory", *Opinion of the Circuit Court, infra*, p. 14a, and violated Article X, Section 4 of the Michigan Constitution of 1908. The court did not reach the federal constitutional question. By stipulation of the parties entered on February 28, 1966, the request for judicial determination of petitioner's liability for the Michigan Use Taxes imposed by the 1959 amendments was extended to cover the period January 1, 1960 to August 27, 1964. The tax imposed upon petitioner during that period is $666,470.40

plus interest of $56,140.19, a total of $722,610.59 on purchases of materials and supplies which were used and consumed in the fulfillment of a single contract with the Michigan State Highway Department during the period January 1, 1960 to August 27, 1964. Stipulation in Docket No. 45136, dated February 28, 1966. Brief of Michigan Department of Revenue in Docket No. 45136, p. 2, filed July 11, 1966. By the same stipulation, the parties agreed that should the prior Opinion of the Circuit Court become final, all liability of the petitioner for sales or use taxes and interest to and including August 27, 1964 would be fully paid.

During this period from January 1, 1960 through August 27, 1964, petitioner was engaged almost exclusively in projects on the United States Interstate System. Bill for Declaratory Judgment, paragraph 3. Amended Answer, paragraph 3.

On July 18, 1966, the Honorable Marvin J. Salmon, Circuit Judge, entered a Declaratory Judgment for petitioner affirming the court's prior opinion of December 3, 1962, that Act 272 of the Public Acts of 1959 was unconstitutional under the Michigan Constitution and holding such Act void and of no effect and the obligation of the petitioner for sales and use taxes to and including August, 27, 1964 fully paid.

The Department of Revenue filed a Claim of Appeal with the Michigan Court of Appeals on August 5, 1966 and on May 9, 1967 moved for a Peremptory Order to Reverse the Judgment of the Trial Court on the basis of the decision of the Michigan Supreme Court in *Walter Toebe & Co. v. Revenue Department*, 378 Mich. 617, 148 N.W.2d 775, (1967), *infra*, p. 18a. Petitioner raised the federal constitutional question in his brief in opposition to the Motion for Peremptory Order. On September 18, 1967, the Michigan Court of Appeals entered its Order granting defendant's Motion for Peremptory Order, *infra*, p. 1a.

Petitioner on October 6, 1967 filed his Application for Leave to Appeal to the Michigan Supreme Court, which was denied on December 18, 1967. The federal constitutional questions were raised by petitioner on pages 2 and

7 of his Application for Leave to Appeal from Decision of Court of Appeals, and in his brief in support thereof.

REASONS FOR GRANTING THE WRIT

1. The imposition of the Michigan Use Tax on property purchased by contractors which is used and completely consumed in the fulfillment of a contract with the State of Michigan, when such contract is 90% paid for by the United States, constitutes an unconstitutional discrimination against the United States. As indicated above, petitioner during the period January 1, 1960 through August 27, 1964, was engaged almost exclusively in the construction of highways for the State of Michigan, which highways were constructed as a part of the Interstate Highway System and for which the State of Michigan received aid under the Federal-Aid Highway Act of 1956, 23 U.S.C. 1964 ed., § 101 et seq. Under the Federal-Aid Highway Act of 1956, the state is reimbursed 90% of the cost of roads constructed thereunder. 23 U.S.C. 1964 ed., § 120(c).

Under a state contract where the financing and cost of construction are borne entirely by the state itself, there would be no reason for the legislature to amend the Use Tax to delete an exemption for goods purchased in connection with state contracts. If the burden of the Use Tax is passed on to the state by inclusion in the contractor's bid, there is no net effect upon the state whether the exemption is granted or not. If the exemption is granted the state does not pay the tax nor does it collect it. If the exemption is not granted, the state collects the tax but must pay it to the contractor. However, when one examines the amendments to the Michigan Use Tax in light of the enactment of the Federal-Aid Highway Act of 1956, in which Act the 90% reimbursement to the states for the construction of Interstate Highways was introduced, the intent of the Michigan Legislature and the effect of the amendment become obvious. In light of the anticipated development in the construction of Interstate Highways in the State of Michigan, financed 90% by the Federal Government, the removal of the exemption in the Michigan Use

Tax for property purchased by contractors and used and consumed in the fulfillment of a contract with the State of Michigan, as for example, the construction of Interstate Highways, makes fiscal sense to the State at the unconstitutional expense of the federal government. The State of Michigan would in fact receive financial benefit from the amendment to the Use Tax since 90% of the Use Tax payment would be reimbursed by the federal government.

The state assumed petitioner would include the use tax in his bid computations, 90% of which would ultimately be paid by the federal government. Because of his belief in the illegality of such an amendment, petitioner did not include such tax in his bids, and is now being forced to suffer an unconstitutional burden because of his relationship to the Federal Interstate Highway Program.

The result is an unconstitutional discrimination against the United States Government and the persons dealing with it. *Phillips Chemical Company v. Dumas Independent School District,* 361 U.S. 376 (1959).

It is also interesting to note that after the Michigan Supreme Court held that the amendment to the use tax as applied to contracts with the United States was unconstitutional in *Knapp-Stiles v. Department of Revenue,* 370 Mich. 629, 122 N.W.2d 642 (1963), in July, 1963, on the basis of intergovernmental immunity, the Michigan Legislature repealed the effect of both the 1959 amendments by Public Acts of 1964, No. 164, effective August 28, 1964, restoring the exemption from the use tax to contractors for property purchased and affixed and make a structural part of real estate in the fulfillment of a contract with the United States, the State of Michigan and its political subdivisions.

The intent and operative effect of the 1959 amendment was a clear and hostile discrimination against the United States Government and persons dealing with it which must be held unconstitutional under the decision announced by this Court in *Phillips Chemical Co. v. Dumas Independent School District,* 361 U.S. 376 (1959).

2. The 1959 amendment to the Michigan Use Tax which denied an exemption to contractors for materials and supplies which are used and consumed in the fulfillment of

a single contract with the State of Michigan is arbitrary, unreasonable and discriminatory and constitutes a denial of the equal protection of the law guaranteed petitioner by the Fourteenth Amendment to the United States Constitution.

The Michigan Sales Tax, Act 167 of 1933, Mich. Comp. Laws '48, § 205.51 et seq., Mich. Stat. Ann. § 7.521 et seq., as amended, since its inception, has contained an exemption in Section 4(b), Mich. Comp. Laws '48, § 205.54(b), Mich. Stat. Ann. § 7.524, for sales to the United States, the State of Michigan, its departments or institutions, or any of its subdivisions. The Michigan Use Tax, when enacted by Public Acts of 1937, No. 94, contained a similar exemption in Section 4(i), Mich. Comp. Laws '48, § 205.94(i), Mich. Stat. Ann. § 7.555(4) (i), for property sold to the United States, the State of Michigan, its departments or institutions, or any of its subdivisions. The Michigan Use Tax was designed to supplement the Michigan Sales Tax (see *Banner Laundering Company v. State Board,* 297 Mich. 419, 298 N.W. 73 (1941)), and in the area of exemptions to federal, state and political subdivisions of the state, has been consistent with the sales tax since the enactment of the use tax in 1937, except for the 1959 amendments to the Michigan Use Tax, the constitutionality of which are herein challenged.

In *R. C. Mahon Co. v. Department of Revenue,* 306 Mich. 660, 11 N.W.2d 280 (1943), the Michigan Supreme Court held that building contractors were retailers of the goods and materials supplied their customers during the course of a construction contract and were subject to the Michigan Sales Tax. The case also held that because a contractor was subject to payment of the sales tax upon sales to his customers, the contractor was not subject to the Michigan Use Tax on goods upon which the sales tax was paid. In response to the *Mahon* case, the Michigan Legislature in 1949 amended by Public Acts of 1949, No. 272, the definition of sales at retail under the Michigan Sales Tax to provide that the term "sale at retail" shall also include the sale of tangible personal property to persons engaged in the business of constructing, altering, repairing or improving real estate for others except in the fulfillment of a contract with any of the exempt classifica-

tions hereinafter set forth in Section 4 (including the United States, the State of Michigan and its political subdivisions). By this amendment, a contractor was made a consumer of the goods purchased rather than a retailer and liable for the payment of the Michigan Sales Tax to his seller. At the same time, by Public Acts of 1949, No. 273, Section 4(m) of the Use Tax was amended to exempt from taxation property purchased by persons engaged in the business of constructing, altering, repairing, or improving real estate for others when property so purchased by such persons was affixed and made a structural part of estate in the fulfillment of a contract within the exempt classifications set forth in subsections (b) (i) (j) and (k) of section 4 (which included the United States, the State of Michigan and its political subdivisions).

In 1955 the sales and use taxes were both amended to provide a further exemption for property used or consumed in the fulfillment of a contract within the exempt classifications in addition to property affixed and made a structural part of real estate in contracts within the exempt classifications. Public Acts of 1955, No. 236 (Sales Tax) and No. 235 (Use Tax).

In 1959, the Michigan Legislature departed from its pattern of dual amendments of both the Michigan Sales and Michigan Use Tax statutes and twice amended the Michigan Use Tax by Public Acts of 1959, No. 263 and 273. The sales tax was not amended. By Public Acts of 1959, No. 263, the Michigan Legislature provided that the exemption for property purchased by contractors which was affixed and made a structural part of real estate or used and completely consumed in the fulfillment of a contract within the exempt classifications should not apply to contracts with "the United States, its incorporated agencies and instrumentalities or any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States". By this amendment, the legislature created a distinction in a contractor's liability for the Michigan Use Tax between goods purchased for contracts with the State of Michigan or its political subdivisions and goods purchased for contracts with the United States.

Later in 1959, by Public Acts of 1959, No. 272, effective January 1, 1960, the legislature further amended the Michigan Use Tax, with no comparable amendment of the sales tax, to exclude the contractor's use tax exemption for contracts with the State of Michigan, its departments or institutions. The result of both amendments was that only property purchased by contractors which was affixed to real estate or used and completely consumed in the fulfillment of a contract with a political subdivision of the State of Michigan was exempt from the Michigan Use Tax, while goods so purchased in connection with contracts with the United States or the State of Michigan were subject to the tax. The sales tax was not so amended, and sales to contractors were exempt from taxation when the goods sold were so used in connection with a contract with the United States, the State of Michigan or the political subdivisions of the State.

In *Knapp-Stiles v. Department of Revenue,* 370 Mich. 629, 122 N.W.2d 642 (1963), the Michigan Supreme Court held that the amendment by Public Acts of 1959, No. 263, deleting the exemption for contracts with the United States, was unconstitutional. The opinion in its language, was based upon two grounds. First, the Michigan Supreme Court held,

> "No reasonable basis appears to support a classification for use tax exemption purposes which distinguishes between the United States or its instrumentalities, agencies, or corporations and those dealing or contracting therewith, on the one hand, and, on the other hand, the State's political subdivisions and those dealing or contracting with them. That such distinction is arbitrary, unreasonable and discriminatory is evident." 370 Mich. 629, 639, 640; 122 N.W.2d 642, 647.

Such language implies that a distinction for use tax purposes which distinguishes between contracts with the United States and contracts with the state's political subdivisions denies the equal protection of the law and is unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitu-

tion. See *Citizens' Telephone Co. v. Fuller*, 229 U.S. 322, 331 (1913), and *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-528 (1959).

The Michigan Court went on to find that the elimination of the exemption also constituted a discrimination against the United States and was therefore unconstitutional under the holding of *Phillips Chemical Co. v. Dumas Independent School District*, 361 U.S. 376 (1959).

The result of the *Knapp-Stiles* case, *supra*, was that the exemption from the Michigan Use Tax for goods bought to fulfill a contract with the United States was restored, and, among governmental entities, only goods bought to fulfill contracts with the State of Michigan were non-exempt.

The Ingham County Circuit Court, in its Opinion dated December 3, 1962, *infra*, p. 5a, which it affirmed by Declaratory Judgment for petitioner on July 18, 1966, found that the distinction created by the 1959 amendment to the Michigan Use Tax which resulted in different treatment for contracts between a contractor and the State of Michigan and a contractor and the political subdivisions of the State of Michigan was "patently unreasonable, palpably arbitrary, discriminatory and wholly illusory." Opinion of the Court in Docket No. 45136, *infra*, p. 14a.

The Michigan Court of Appeals reversed the decision of the Ingham County Circuit Court on the basis of the Michigan Supreme Court's holding in *Walter Toebe & Co. v. Revenue Department*, 378 Mich. 617, 148 N.W.2d 775 (1967).

In the *Toebe* case, *supra*, the Michigan Supreme Court held that the distinction between the treatment afforded a contractor engaged in a contract with the State of Michigan and a contractor engaged in a contract with a political subdivision of the State of Michigan was justified because,

> "* * * there exist many basic differences between the State and its subdivisions that would justify the legislature exempting the tax on materials used in constructing county, city, and village roads and not State roads, and we have stated in cases like the present that it is not the function of this Court to consider the propriety or justness of the tax, nor to

criticize the public policy which led to adoption of the legislation." 378 Mich. at 623, 148 N.W.2d at 777.

The Court distinguished its holding in *Knapp-Stiles, supra,* on the ground that *Knapp-Stiles* involved only the question of intergovernmental immunity and not the arbitrary nature of the different exemptions. If, however, a distinction between the United States and the political subdivisions of the State of Michigan is evidently arbitrary, unreasonable and discriminatory, *Knapp-Stiles v. Dept. of Revenue,* 370 Mich. 629, 640, 122 N.W.2d 642, 647, it is difficult to see why a distinction between the State of Michigan and its political subdivisions is not similarly arbitrary, unreasonable and discriminatory. By its holding in *Toebe,* the Michigan Supreme Court apparently read out the first ground of its decision in *Knapp-Stiles,* leaving only the question of intergovernmental immunity.

There is no basis upon which to support a classification which exempts from the Michigan Use Tax property purchased by contractors which is used and completely consumed in the fulfillment of a contract with a political subdivision of the State of Michigan and subjects to tax property purchased by a contractor which is used and completely consumed in the fulfillment of a contract with the State of Michigan when the result of such classification is to impose upon petitioner a tax burden in excess of $700,000.00.

The basis of any exemption for contracts with governmental entities is the assumption that the ultimate burden will fall on the governmental entity involved, a fact recognized by the Michigan Supreme Court in *Toebe, supra.* (In fact, this result has not occurred herein, where petitioner, believing the 1959 amendments unconstitutional, did not include the use tax in his bid computations and will bear the full burden of such an unconstitutional classification if unsuccessful herein.) The defendant argued and the Michigan Supreme Court agreed that there are sufficient distinctions between the state and its political subdivisions to justify this treatment afforded contractors depending upon the governmental entity involved. Such distinctions are wholly illusory when the exemption is granted to the political subdivision but imposed upon

the State. Even assuming, *argumendo,* that it is the ultimate contracting party, either the State or its political subdivision which bears the burden of the use tax as an item of the contractor's cost which is included in his bid, there is neither sense nor reason in the state imposing the use tax on contracts with the state, since the state will thereafter pay the tax to itself. To impose the tax upon a political subdivision results in a reallocation of funds between the political subdivision and the state. To impose a tax upon the state involves no such reallocation. As far as the state is concerned, if the burden is borne by the state, there is no difference in result whether the exemption is granted or not. When the exemption is granted, the state receives no income but is not required to pay the tax. When no exemption is granted, the state receives the income but is required to pay the tax. The net result, to the state, is the same.

However, as is the case here presented, where the burden of the tax is on the contractor, a distinction between contracts with the State and its political subdivisions is arbitrary, unreasonable and discriminatory. Such a palpably arbitrary distinction exceeds the classification powers of the State of Michigan and violates the Equal Protection guarantee of the Fourteenth Amendment to the Constitution of the United States. *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522, 526-528.

3. The legal maxim, "hard cases make bad law", is exemplified by the decision of the Michigan Supreme Court in *Walter Toebe & Co. v. Revenue Department,* 378 Mich. 617, 148 N.W.2d 775 (1967). If, as noted above, a distinction between contracts with the United States and contracts with the state's political subdivisions is arbitrary, unreasonable and discriminatory, a distinction between contracts with the State of Michigan and contracts with the state's political subdivisions must also be arbitrary, unreasonable and discriminatory. Under the logical reasoning of the *Knapp-Stiles* case, *supra,* the same result should have been arrived at in the *Toebe* case, *supra.* The court made particular note of the fact in the *Toebe* case that the economic burden of the failure to grant an exemption for

contractors with the State of Michigan would not fall on the contractor because the tax, if imposed, would be an element of the unit price in the bid which is repaid to the contractor upon payment from the state. The court noted:

> "Plaintiff Toebe-Hull Company admits in the pleadings in this case that it considered the tax in computing its bid and thereby such tax was included in its contract price, * * *" 378 Mich. at 624, 148 N.W.2d at 778.

To grant the petition of Walter Toebe Co. would have resulted in a windfall gain to the contractor, who, by his own pleadings and admissions, had already been reimbursed by the state for the amount of the tax. Furthermore, the reported facts do not reveal whether construction of Interstate Highways was involved. Rather than to produce such a windfall to the contractor, and in the absence of the governmental immunity question being raised, the Michigan Supreme Court chose to allow the state to receive the benefits, if any, and upheld the constitutionality of the 1959 amendment.

When no such windfall gain will herein result inasmuch as petitioner L. A. Davidson did not include the Michigan Use Tax in his bids submitted to the state for the reason that said use tax was believed to be unconstitutional, and the assessment of the use tax upon L. A. Davidson will result in the denial of the equal protection of the law guaranteed by the Fourteenth Amendment to the United States Constitution, and an unconstitutional burden on the United States government and those with whom it deals, the decision of the Michigan Court of Appeals must be reversed.

CONCLUSION

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Dated: March 18, 1968